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The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

WILLIAM D. O'LEARY
SECRETARY

HOWARD K. KOH, MD, MPH
COMMISSIONER

MEMORANDUM

TO: Commissioner Howard K. Koh and Members of the Public Health Council

FROM: Paul Dreyer, Director, Deputy Director, Bureau of Health Quality Management PD/NE

THROUGH: Nancy Ridley, Assistant Commissioner, Bureau of Health Quality Management NR

SUBJECT: Request for Emergency Promulgation of Amendments to Hospital Licensure Regulations 105 CMR 130.000 et seq. Regarding the Discontinuance of Essential Health Services

DATE: December 19, 2000

The purpose of this memorandum is to request the Public Health Council's emergency promulgation of amendments to the Department's hospital licensure regulations. The proposed amendments govern the discontinuance of essential health services and implement section 2 of Chapter 141 of the Acts of 2000 -- the new managed care reform law. Section 2 requires that the department define essential services, and sets out a process that hospitals must follow if they choose to discontinue an essential service. Emergency promulgation is necessary because -- due to an emergency preamble -- section 2 became effective when signed by the Governor on July 21, 2000, and it is important that implementing regulations be in place prior to any proposed discontinuance of hospital services.

Background

Under the law, hospitals that contemplate closing an essential service must provide 90 days advance notice of the closure to the department, which in turn must hold a public hearing on the proposal, and must determine whether the proposed closure will "significantly reduce access to necessary services." In the event that the Department makes such a determination, the Department must require hospitals to submit a plan for "assuring access to such necessary services following the hospital's closure of the service..."

The Emergency Regulation

A draft of the emergency regulation is attached as Exhibit 1. The Department's approach has been to define all licensed hospital services (see Exhibit 2) (with some exceptions, as set out in the regulation) as essential services, so that a hospital notification of the closure of any of these services would trigger the public hearing process. Because a hospital may operate at different locations under a single license, the proposed regulations include a definition of campus, and provide that the closure of a campus providing an essential service would also trigger the public hearing requirement.

The regulation sets out time frames for the public notice and public hearing, and list the factors that the Department should consider in determining whether the discontinued service is necessary for preserving access and health status in the hospital's service area. Finally, the regulation specifies the elements of the plan that a hospital must submit in the event that the Department determines that the discontinued service is necessary for preserving access and health status in the hospital's service area.

Issues for Further Clarification

During the process of developing the proposed amendment, three issues were identified. The Department will be requesting specific comment from the public regarding the following issues. These include:

1. **A more refined definition of ambulatory services.** Under the present proposal, a site that provides an array of ambulatory programs could close a single program without tripping the definition of essential service. We will be requesting comments as to which ambulatory programs should, in and of themselves, be considered essential services.
2. **Plan Evaluation.** The present regulation does not include a provision for hospital or Department follow-up to determine whether the hospital's plan for assuring access has been successfully implemented. We will be requesting comments about appropriate post closure follow-up actions.
3. **Service Area.** The regulation requires service area specific planning but does not define service area. Our plan is to use the Determination of Need guidelines for the definition of a hospital's service area, but this definition may not be appropriate for all cases. We will be requesting comments about alternative approaches to the definition of service area.

Summary

The proposed emergency regulations define essential services as required by Chapter 141 of the Acts of 2000. They set out a public hearing process, and in the event that the Department finds that a discontinued essential service is necessary for preserving access and health status in the hospital's service area, a subsequent planning process. Staff will hold a public hearing on the emergency regulations and return to the Council within the requisite 90 days for permanent promulgation.